IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 17940 of 2006(I)

AGAINST THE ORDER IN EP 75/02,in E.P.24/2002 IN LAR.1/1993 of SUB COURT, PATHANAMTHITTA

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PETITIONER:

NARAYANAN ACHARI RAJAN ACHARI,
VELUTHAMMA VEEDU, VETTIPRAM MURI,
PATHANAMTHITTA VILLAGE.

BY ADV. SRI.LIJU.V.STEPHEN

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA.

2. V.C.KRISHNAN ACHARI,
S/O.CHALLAPPAN ACHARI, VELUTHAMMA VEEDU,
VETTIPRAM MURI, PATHANAMTHITTA VILLAGE.

3. AYYAPPAN ACHARI SASTHAVACHARI,
VELUTHAMMA VEEDU, VETTIPRAM MURI,
PATHANAMTHITTA VILLAGE.

4. PARVATHY AMMAL,
W/O.PARAMESWARAN ACHARI,
VELUTHAMMA VEEDU, VETTIPRAM MURI,
PATHANAMTHITTA VILLAGE.

BY GOVERNMENT PLEADER SMT. R.BINDU FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the affidavit and petition filed inj EA 75/02 before the Sub Court, Pathanamthitta by the 2nd respondent dated 26.6.2002.

Ext.P2 true copy of the objection filed by the petitioner and respondents 3 & 4 in EA 75/02

Ext.P3 true copy of the order in EP No.24/02 in LAR 1/93 of the Subordinate Judge, Pathanamthitta dated 23.2.2006.

First Respondent's Exts:

Ext.R1(a) true copy of the judgment dated 15.10.2001.

Ext.R1(b) true copy of the decree in LAR 1/93

M.N.Krishnan, J.

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W.P(C).No.17940 of 2006

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Dated this the 7th day of November, 2007.

JUDGMENT

This Writ Petition is filed by the first claimant in the L.A.R. against the order passed by the Subordinate Judge, Pathanamthitta. Respondents 3 and 4 are claimants 2 and 3 and the second respondent is the fourth claimant and the first respondent is the judgment debtor in the case. A perusal of the award passed by the Subordinate Judge in L.A.R. No.1 of 1993 would reveal that out of the amount ordered, claimants 1 to 3 are entitled to have one out of 6 shares each and the fourth claimant is entitled to the remaining 3 out of 6 shares or in other words claimants 1 to 3 are entitled to 50% shares jointly and the fourth claimant is entitled to have the balance 50%.

2. Now the grievance is that claimants 1 to 3 had withdrawn the entire amount in deposit and therefore the court below directed them to redeposit an amount of Rs.1,40,301.50.

It is against that decision, the present Writ Petition is filed.

3. Heard counsel for the State Government and unfortunately there is no representation for the fourth claimant. I am informed that the Execution Petition is still pending consideration before the court below. Against the award passed by the Land Acquisition Court, an appeal was preferred and there was re-fixation of the compensation by the Appellate Court. It is contended by the learned counsel for the writ petitioner that still amounts are due to him from the Government whereas the learned Government Pleader would contend that the amount already deposited is in excess. In order to resolve the entire dispute the court has to arrive at a figure, that is, the total entitlement of compensation in favour of the claimants and thereafter should see whether claimants 1 to 3 together had withdrawn any amount in excess of 50% of the amount which is due to them. Ultimately, if court finds that they had not withdrawn any amount in excess of 50% due to them, one cannot hold that they are bound to reimburse the amount. If it is otherwise, then necessarily claimants 1 to 3 have to be directed to reimburse the amount which they had drawn in excess than

what is due to them. Therefore, a final determination regarding the actual amount due to the claimants is a must for a proper decision in this case and for that purpose, the matter is already pending before the Execution Court.

4. Therefore, I set aside the order passed by the learned Subordinate Judge in the execution application and direct that the court should consider the Execution Petition and fix the amount of total compensation to find out whether claimants 1 to 3 had drawn anything in excess of their share. If the court finds that after fixing the amount they have drawn in excess, then direction may be given to redeposit. If it is not so, they cannot be directed to redeposit. If it is found that any amount is still due from the Government further direction may be given in that regard and the matter proceeded with.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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